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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,525	11/13/2001	Aemilianus G. J. Staring	PHN 14989R	1690

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BRIARCLIFF MANOR, NY 10510

EXAMINER

PATEL, ASHOK

ART UNIT	PAPER NUMBER
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2889

MAIL DATE	DELIVERY MODE
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06/04/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/053,525	Applicant(s) STARING ET AL.	
	Examiner Ashok Patel	Art Unit 2889	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Finality of the rejection of the last Office action is withdrawn upon consideration of a Brief received on 05/31/2006. The Examiner withdraws (1) rejection of claims 1-3 under 35 U.S.C. 251; and (2) obviousness-type double patenting rejection of former claims 1-3.

2. The specification needs to be updated with respect to status of continuation of all co-pending and issued U.S. Patent Applications.

3. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 6,407,489 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application. These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

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4. Reissue Declaration is Defective because:

(1) Declaration filed on 6/4/02 (which is a copy of the Declaration filed with the Reissue Application on 11/13/01) failed to identify the foreign application for patent which priority is claimed unless supplied on an application data sheet (37 CFR 1.76). See MPEP 1417.

MPEP 1417 states that:

A "claim" for the benefit of an earlier filing date in a foreign country under 35 U.S.C. 119(a)-(d) must be made in a reissue application, even though such a claim was previously made in the application for the original patent to be reissued. However, no additional certified copy of the foreign application is necessary. The procedure is similar to that for "Continuing Applications" in MPEP § 201.14(b).

In addition, 37 CFR 1.63 requires that in any application in which a claim for foreign priority is made pursuant to 37 CFR 1.55, the oath or declaration must identify the foreign application for patent or inventors' certificate on which priority is claimed unless supplied on an application data sheet (37 CFR 1.76), and any foreign applications having a filing date before that of the application on which priority is claimed, by specifying:

- (a) the application number of the foreign application;
- (b) the foreign country or intellectual property authority; and
- (c) the day, month, and year of the filing of the foreign application.

(2) Applicant failed to include a statement of at least one error which is relied upon to support the reissue application.

The reissue declaration filed on 6/4/02 (which is a copy of the Declaration filed on 11/13/01), states that:

The inventor believes that the original patent is partly inoperative for the following reasons:
At least one claim should have been included to provide protection for the electroluminescent device of the invention in which the active layer is made from a semiconducting soluble conjugated polymer.
Failure to include at least one such claim resulted in Applicants claiming less than they had a right to claim and such failure was in error.

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The reissue declaration filed on 6/4/02 does not specifically identify the error in the original claim how it renders the original patent wholly or partly inoperative or invalid. Thus presenting new claim 3 to correct the error (e.g. what the original claims 1-2 lacked that the newly added claim 3 has, etc.). Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. See MPEP 1414.II. (C).

MPEP 1414.II.(C) states that:

A statement of ".....failure to include a claim directed to....." and then presenting a newly added claim, would not be considered a sufficient " error" statement because applicant has not pointed out what the other claims lacked (i.e., claims 1-2) that the newly added claim 3 has, or vice versa. Such a statement would be no better than saying in the reissue oath or declaration that "this application is being filed to correct errors in the patent which may be noted from the change made by adding new claim 3." In both cases, the error has not been identified.

(3) Supplemental Declaration is required for the above defects or errors that are corrected in the reissue after the filing of the application and the original reissue declaration (see MPEP 1414.01). However, if a new declaration is submitted to state an error that supports this reissue then a supplemental declaration is not needed.

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5. Claims 1-3 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

6. The Amendment received on 02/03/2006 to the Claims is not in a proper format.

Above-mentioned amendment is improper since all subject matter being added to an **original patent claim** must be underlined. 37 CFR 1.173(b)(2) and (d). See MPEP 1453. II. Thus, entire new claim 3 which is added by reissue must be underlined without brackets.

7. Applicant is reminded that any addition to the specification and claims must be made using underlining and any deletion to the specification and claims must be made using brackets, "i.e. []". Every time, amendment to the claims must be made with respect to the original patent, not with respect to previously submitted amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ashok

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Patel whose telephone number is 571-272-2456. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minh-Toan Ton can be reached on 571-272-2303. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Ashok Patel/
Ashok Patel
Primary Examiner
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